

No. 16004 /

**United States
Court of Appeals**
for the Ninth Circuit

THE IDAHO FIRST NATIONAL BANK,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

**Appeal from the United States District Court
for the District of Idaho,
Southern Division.**

FILED

JUN 12 1958

PAUL P. O'BRIEN; GLENN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States for the
District of Idaho, Southern Division

Civil No. 3269

THE IDAHO FIRST NATIONAL BANK,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Plaintiff complains of defendant, and for cause of action, alleges and avers as follows to wit:

I.

During all times mentioned herein plaintiff was a duly authorized and existing corporation, under and by virtue of the National Bank Act, with its principal place of business in the City of Boise, Idaho. Plaintiff is a resident of the above-entitled judicial district.

II.

Jurisdiction herein is based upon Title 28 United States Code Sections 1346(a), 1348 and 1402(a).

III.

This is an action arising under the Internal Revenue Laws of the United States, more particularly Title 26, U.S.C.A., Section 41 (1939), Section 22 (1939), Section 6901(a)(1)(A)(1) (1954)

(prior law Section 311 (1939)), Section 6402(a) (1954) (prior law Section 322 (1939), Section 115 (c) (1939), Section 112(b)(6) (1939), Internal Revenue Income Tax Regulations 118, Sections 39.22 (a)20 and 39.115(a)2.

IV.

That prior to the 10th day of May, 1952, the Wendell National Bank, a corporation, was a duly authorized and existing corporation, under and by virtue of the National Bank Act, with its principal place of business at Wendell, Idaho, within the above-entitled judicial district.

V.

That on the 10th day of May, 1952, plaintiff purchased the entire capital stock of the Wendell National Bank, Wendell, Idaho, for the sole purpose of acquiring the assets of said bank.

VI.

That on the 10th day of May, 1952, immediately after the purchase of the Wendell National Bank stock by plaintiff, a special meeting of the stockholders of said Wendell National Bank, was held, and by resolution, duly and regularly passed by a vote of one hundred per cent of the total capital stock of said corporation the Wendell National Bank was voluntarily dissolved and E. R. Jones, Vice President of plaintiff corporation, was appointed liquidating agent, for the purpose of winding up the affairs of said corporation.

VII.

That thereafter on the 10th day of May, 1952, E. R. Jones, acting in his capacity as liquidating agent of said corporation made and executed the necessary transfers, assignment and sale of all assets and liabilities of said Wendell National Bank, both real and personal, to plaintiff in exchange for the Wendell National Bank capital stock owned by plaintiff.

VIII.

That immediately thereafter, and on the same day, said instrument was delivered to plaintiff the sole stockholder of record and conveyed to said plaintiff in kind all real estate and personal property owned by said Wendell National Bank and from and after May 10th, 1952, said Wendell National Bank owned no property either real or personal, whatsoever, and realized no income thereafter and for all intent and purposes was fully liquidated.

IX.

That said Wendell National Bank is in the general banking business and at all times prior to its ceasing business and liquidation consistently reported its income by using "cash basis" method of accounting.

X.

That on the 19th day of June, 1952, a corporation income return was filed for said Wendell National Bank, for the period from January 1st, 1952, to May 10th, 1952, by plaintiff. In said re-

turn plaintiff erroneously included as taxable income interest not due or collectible in the sum of \$10,843.55. That plaintiff did on the 19th day of June, 1952, and the 30th day of June, 1952, pay to the Collector of Internal Revenue for the District of Idaho, the corporation income tax in the amount of \$5,577.61 and \$242.51, respectively, based upon said income as reported on said tax return. Photostat copy of corporation return prepared by the office of Director of Internal Revenue is attached hereto and marked Exhibit "A."

XI.

That the interest on unmatured notes receivable were not due or demandable or collectible until the note matured, said interest being in the nature of a property right before it is due. Only a few notes were matured and delinquent. The interest was calculated at the time of liquidation in order to determine the value of the asset for liquidation purposes by computing the accrued interest on each note or bond from the date of the instrument to the date of liquidation. The amount of accrued interest was placed in pencil notation on each note. The interest was then totalled and the adding machine tape was saved and made a part of plaintiff's records.

XII.

That subsequently on or about November 18, 1954, the Commissioner of Internal Revenue through his delegate examined the final corporation income tax return of the Wendell National Bank for the period

from January 1st, 1952, to May 10, 1952. The revenue agent's report dated November 18, 1954, eliminated the erroneously accrued but not due or collectible interest in the amount of \$10,843.55, from income giving the following reason: "The Wendell National Bank has always kept records and filed returns on the cash basis. Just prior to distribution of the assets of Wendell National Bank to the Idaho First National Bank on May 10, 1952, accrued interest was set up in Wendell records and return by means of a debit to the assets receivable and credit to taxable income. Although the interest had accrued it was not payable. The accrued interest does not represent taxable income to the Wendell National Bank on cash basis of computing income and is therefore eliminated."

The elimination of interest from income in the amount of \$10,843.55, resulted in an overassessment of \$3,253.07, which was scheduled for refund on February 18, 1955, and the refund of that amount plus interest was received by plaintiff on or about March 15, 1955.

XIII.

That the examining officer correctly interpreted the law and regulations when he excluded the not due or collectible interest for the reason that "no gain or loss is realized by a corporation from the mere distribution of its assets in kind in partial or complete liquidation, however they may appreciated or depreciated in value since their acquisition."

XIV.

That thereafter on or about October 4, 1955, the Commissioner of Internal Revenue through his delegate re-examined the Wendell National Bank final corporation income tax return for the period from January 1st, 1952, to May 10, 1952.

XV.

That on or about October 4, 1955, the Commissioner of Internal Revenue issued the thirty day letter (bureau symbols A:R:JRC:30d:mjt) proposing to assess against plaintiff the amount of \$3,253.07, plus interest as provided by law, constituting plaintiff liability as transferee of the assets of the Wendell National Bank, Wendell, Idaho, for income taxes due for the period ended May 10, 1952. In the report attached to said thirty day letter the accrued but not due or collectible interest in the amount of \$10,843.55, was included as income and the Commissioner in his reason for including said interest as income referred to revenue ruling 255, Cumulative Bulletin 1953-2,10. He further stated "The substance of the above ruling and the cited cases is that where the taxpayer liquidating corporation has performed substantially all the services necessary to establish its right to the income, the Commissioner is within his rights under Section 41 to change the method of determining income to include such items, Section 22(a)(20) relating to the gross income of corporations in liquidation notwithstanding. In view of the foregoing, it is held that interest accrued at May 10, 1952, in the amount of

\$10,843.55, is taxable to the liquidating corporation, the Wendell National Bank and adjustment is made accordingly.”

Plaintiff did not accept the findings of the Commissioner and on December 12, 1955, filed a protest.

XVI.

That on February 3, 1956, a conference was held on said protest with a member of the Commissioner's appellate staff. No agreement was reached. However the Commissioner determined that the amount of interest in question was \$13,191.19, instead of \$10,843.55.

XVII.

That on April 6, 1956, the Commissioner of Internal Revenue issued a deficiency notice to plaintiff stating that the deficiency of \$3,957.36, plus interest as provided by law constituted the liability as transferee of assets of the Wendell National Bank, and would be assessed. Said deficiency gave plaintiff ninety days in which to file a petition with the Tax Court of the United States, at its principal address in Washington 4, D. C., for a redetermination of deficiency.

XVIII.

That plaintiff in exercising its right to choose the forum elected to pay the tax and seek relief in the United States District Court.

XIX.

That on May 25th, 1956, plaintiff paid the trans-

feree assessment of \$3,957.36 plus interest of \$896.22 or a total of \$4,853.58.

XX.

That plaintiff in paying the transferee assessment has the right to contest the tax issue of the transferor.

XXI.

That on the 29th day of May, 1956, plaintiff as transferee filed a claim for refund of \$3,957.36, plus interest provided by law. Copy of said claim is attached and made a part hereof (Exhibit "B").

XXII.

That the selection of system of keeping books is primarily for the taxpayer. That the Commissioner is not authorized to enact legislation infringing upon the free choice of accounting system which is given taxpayer under Section 41 IRC nor to arbitrarily change the accounting system used by taxpayer where it clearly reflects income. That the Wendell National Bank has for more than twenty years kept its books and reported its income on the basis of cash receipts and disbursements. That the said cash basis is an approved standard method of accounting that clearly reflects income.

That the not due or collectible interest is not income under the cash basis method of accounting. That the Commissioner does not have the authority to change this cash basis taxpayer's method of accounting in the year of liquidation where taxpayer

has consistently reported its income on the cash basis.

XXIII.

That the individual stockholders of the Wendell National Bank who sold their stock to plaintiff for \$418.50 per share paid tax as capital gain on the excess of the selling price over the cost or basis of their stock. Said excess is in fact the increment in value of the notes and other assets which were distributed to plaintiff in exchange for the Wendell National Bank stock purchased by plaintiff.

XXIV.

That plaintiff subsequently reported the interest on notes and bonds received through purchase of the Wendell National Bank as income when the interest was received, however, if offset same by the amount allocated as cost at time of liquidation.

XXV.

That the Commissioner of Internal Revenue rejected the claim for refund on the 5th, day of July, 1956. Copy is attached hereto and marked Exhibit "C."

Wherefore, plaintiff prays judgment against defendant in the sum of \$3,957.36, together with interest provided by law and their costs and disbursements herein incurred.

/s/ MYRON E. ANDERSON,
Attorney for Plaintiff.

[Endorsed]: Filed July 24, 1956.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, the United States of America, by and through its attorney Sherman F. Furey, Jr., United States Attorney in and for the District of Idaho, and for answer to the complaint of the plaintiff admits, denies and alleges as follows:

1. Admits the allegations contained in Paragraph I of the complaint.

2. Admits the allegations contained in Paragraph II of the complaint.

3. Admits the allegations of Paragraph III of the complaint, except denies that this action arises under Section 115(c) and/or Section 112(b) (6) of the Internal Revenue Code of 1939. It is further denied that this action arises under Treasury Regulations 118, Section 39.115(a)-2.

4. Admits the allegations contained in Paragraph IV of the complaint.

5. Admits the allegations contained in Paragraph V of the complaint.

6. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph VI of the complaint.

7. Alleges that it is without knowledge or information sufficient to form a belief as to the truth

of the allegations contained in Paragraph VII of the complaint, except admits that on May 10, 1952, all assets and liabilities of the Wendell National Bank, both real and personal, were delivered to the plaintiff in exchange for the Wendell National Bank capital stock owned by the plaintiff.

8. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph VIII of the complaint, except admits that on May 10, 1952, all the real estate and personal property owned by the Wendell National Bank was conveyed in kind to the plaintiff.

9. Denies the allegations contained in Paragraph IX of the complaint, except admits that the Wendell National Bank was in the general banking business prior to May 10, 1952.

10. Denies the allegations contained in Paragraph X of the complaint, except admits that on June 20, 1952, a corporation income tax return was filed for the Wendell National Bank for the period from January 1, 1952, to May 10, 1952. It is further admitted that the Wendell National Bank reported as taxable income in that return accrued interest in the amount of \$10,843.55. It is further admitted that the plaintiff paid \$5,577.61 on June 25, 1952, and on July 7, 1952, plaintiff paid \$242.51 to the defendant in satisfaction of the tax liability interest in the amount of \$10,843.55. It is further admitted that the income tax return for the Wendell National Bank for the period January 1, 1952, to

May 10, 1952, is attached to the complaint and marked Exhibit "A."

11. Denies the allegations contained in Paragraph XI of the complaint, except alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the last three sentences of Paragraph XI.

12. Admits the allegations contained in Paragraph XII of the complaint, except denies that on the income tax return filed for the Wendell National Bank January 1, 1952, to May 10, 1952, there was any interest erroneously accrued, which was not due or collectible. It is further denied that there was ever any over-assessment of income taxes against the Wendell National Bank. The defendant alleges that \$3,253.07 which was scheduled for refund to the plaintiff on February 17, 1955, was refunded to the plaintiff on that date.

13. Denies the allegations contained in Paragraph XIII of the complaint.

14. Admits the allegations contained in Paragraph XIV of the complaint.

15. Admits the allegations contained in Paragraph XV of the complaint, except denies that interest in the amount of \$10,843.55 was not due or collectable.

16. Admits the allegations contained in Paragraph XVI of the complaint.

17. Admits the allegations contained in Paragraph XVII of the complaint.

18. Admits the allegations contained in Paragraph XVIII of the complaint.

19. Admits the allegations contained in Paragraph XIX of the complaint, except alleges that the payment referred to in Paragraph XIX of the complaint was made by the plaintiff on May 29, 1956.

20. Admits the allegations contained in Paragraph XX of the complaint.

21. Denies the allegations contained in Paragraph XXI of the complaint, except admits that on May 29, 1956, the plaintiff as transferee of the assets of the Wendell National Bank filed a claim for refund of \$3,957.36, or any other amount legally refundable. It is further admitted that a copy of that claim is attached to the complaint and denominated Exhibit "B."

22. For answer to Paragraph XXII of the complaint the defendant alleges that the allegations contained therein, with the exception of the allegations contained in the third sentence of Paragraph XXII, constitute conclusions of law and as such require no answer. However, if it is determined that any or all of these allegations require an answer the defendant denies each and every one of them. The defendant further alleges that it is without knowledge or information sufficient to form a belief as to

the truth of the allegations contained in the third sentence of Paragraph XXII of the complaint.

23. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XXIII of the complaint.

24. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XXIV of the complaint.

25. Admits the allegations contained in Paragraph XXV of the complaint.

Wherefore, having fully answered, the defendant prays for judgment in its favor, for dismissal of the plaintiff's complaint, and for the costs of this action.

SHERMAN F. FUREY, JR.,
United States Attorney;

By /s/ MARION J. CALLISTEN,
Assistant U. S. Attorney.

[Endorsed]: Filed September 21, 1956.

[Title of District Court and Cause.]

STIPULATIONS OF FACT

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel of record, that the following facts shall be taken as

true without prejudice to the right of either party to furnish material and competent evidence of any other facts not inconsistent herewith or to object to the introduction in evidence of such facts on the grounds of immateriality or irrelevancy.

1. During all times mentioned herein plaintiff was a duly authorized and existing corporation, under and by virtue of the National Bank Act, with its principal place of business in the City of Boise, Idaho. Plaintiff is a resident of the above-entitled judicial district.

2. The court has jurisdiction over this action by virtue of 28 U.S.C., Sections 1346(a), 1348 and 1402(a).

3. Prior to the 10th day of May, 1952, the Wendell National Bank, a corporation, was a duly authorized and existing corporation, under and by virtue of the National Bank Act, with its principal place of business at Wendell, Idaho, within the above-entitled judicial district.

4. On the 10th day of May, 1952, plaintiff purchased the entire capital stock of the Wendell National Bank, Wendell, Idaho, for the sole purpose of acquiring the assets of said bank.

5. On the 10th day of May, 1952, immediately after the purchase of the Wendell National Bank stock by plaintiff, a special meeting of the stockholders of said Wendell National Bank was held, and by resolution, duly and regularly passed by a vote of one hundred per cent of the total capital

stock of said corporation, the Wendell National Bank was voluntarily dissolved and E. R. Jones, Vice-President of plaintiff corporation, was appointed liquidating agent, for the purpose of winding up the affairs of said corporation. A copy of the resolution of the stockholders of the Wendell National Bank voluntarily dissolving the said corporation and the appointment of E. R. Jones, Vice-President, as liquidating agent is attached as Exhibit A.

6 On May 10, 1952, all assets and liabilities of the Wendell National Bank, both real and personal, were delivered to plaintiff in accordance with the terms of Exhibit A to this stipulation.

7. On May 10, 1952, the Wendell National Bank was fully liquidated for all intents and purposes.

8. Said Wendell National Bank was in the general banking business and prior to its ceasing business and liquidating consistently reported its income on the "cash basis" method of accounting. A copy of affidavit from Virginia Dodge, C. P. A., an employee of the plaintiff is attached hereto as Exhibit B, to this stipulation.

9. On June 20, 1952, a corporation income tax return was filed for the Wendell National Bank, for the period from January 1, 1952, through May 10, 1952, by plaintiff. In that return the plaintiff included as taxable income accrued interest on notes receivable in the amount of \$10,843.55. Plaintiff paid \$5,577.61, on June 25, 1952, and on July 7,

1952, the plaintiff paid \$242.51, to the defendant in satisfaction of the tax liability shown to be due on that return. A photocopy of the income tax return for the Wendell National Bank for the period January 1, 1952, to May 10, 1952, is attached as Exhibit C, to this stipulation.

10. The accrued interest on notes receivable was calculated at the time of liquidation of the Wendell National Bank in order to determine the value of the assets for liquidation purposes by computing the interest earned but not then payable, on each note from the date of the instrument to the date of the liquidation. The amount of the accrued interest was placed in pencil notation on each note. The interest was then totaled by means of an adding machine tape, the total being \$13,191.19. Expenses attributable to this accrued interest on notes receivable had been deducted for income tax purposes when paid by the Wendell National Bank prior to its liquidation. Unpaid accrued expenses of the Wendell National Bank had not been deducted for income tax purposes at the date of liquidation.

11. Subsequently on or about November 18, 1954, the Commissioner of Internal Revenue through his delegate examined the final corporation income tax return of the Wendell National Bank for the period from January 1, 1952, to May 10, 1952. The revenue agent's report dated November 18, 1954, eliminated the accrued interest from income giving the following reason: "The Wendell National Bank has always kept records and filed returns on the cash

basis. Just prior to the distribution of the assets of the Wendell National Bank to the Idaho First National Bank on May 10, 1952, accrued interest was set up in Wendell record and return by means of a debit to the assets receivable and credit to taxable income. Although the interest had accrued it was not payable. The accrued interest does not represent taxable income to the Wendell National Bank on cash basis of computing income and is therefore eliminated."

12. The Internal Revenue Service determined that the elimination from income of accrued interest on notes receivable in the amount of \$10,843.55, resulted in an overassessment in the amount of \$3,253.07, which was scheduled for refund on February 17, 1955. The refund of that amount plus interest was received by the plaintiff on or about March 15, 1955.

13. Thereafter and prior to October 4, 1955, the Commissioner of Internal Revenue through his delegate re-examined the Wendell National Bank final corporation income tax return for the period from January 1, 1952, to May 10, 1952.

14. On October 4, 1955, the Commissioner of Internal Revenue issued the thirty day letter (Bureau Symbols A:R:JRC:30d:mjt) proposing to assess against plaintiff the amount of \$3,253.07, plus interest as provided by law, constituting the plaintiff's liability as a transferee of the assets of the Wendell National Bank, Wendell, Idaho, for income

taxes due for the period ended May 10, 1952. In the report attached to that thirty day letter the accrued interest on notes receivable in the amount of \$10,843.55, was included as taxable income of the Wendell National Bank and the Commissioner of Internal Revenue in his reason for including that interest as income referred to revenue ruling 255, Cumulative Bulletin 1953-2, 10. He further stated that, "The substance of the above ruling and the cited cases is that where the taxpayer liquidating corporation has performed substantially all the services necessary to establish its right to the income, the Commissioner is within his rights under Section 41 to change the method of determining income to include such items, Section 22(a)(20) relating to the gross income of corporations in liquidation notwithstanding. In view of the foregoing, it is held that interest accrued at May 10, 1952, in the amount of \$10,843.55, is taxable to the liquidating corporation, the Wendell National Bank, and adjustment is made accordingly."

Plaintiff did not accept the findings of the Commissioner and on December 12, 1955, filed a protest.

15. On February 3, 1956, a conference was held on the protest with a member of the appellate staff of the Internal Revenue Service. No agreement was reached. However, the Commissioner correctly determined that the amount of accrued interest in question was \$13,191.19, instead of \$10,843.55.

16. On April 6, 1956, the Commissioner of Internal Revenue issued a deficiency notice to the

plaintiff stating that the deficiency of \$3,957.36, plus interest as provided by law constituted its liability as a transferee of the assets of the Wendell National Bank, and would be assessed unless the plaintiff filed a petition in the Tax Court of the United States, within ninety days, seeking a redetermination of the deficiency.

17. Plaintiff in exercising its right to choose the forum elected to pay the tax and seek relief in the United States District Court.

18. On May 29, 1956, plaintiff paid the transferee assessment of \$3,957.36, plus interest of \$896.22 or a total of \$4,853.58.

19. The plaintiff in paying the transferee assessment has the right to contest the tax issue of the transferor and is liable as transferee for any additional tax owed by the transferor.

20. On May 29, 1956, the plaintiff as transferee, filed a claim for refund of \$3,957.36, or any other amount legally refundable by law, plus interest provided by law. A copy of that claim for refund is attached as Exhibit D to this stipulation.

21. The Wendell National Bank has always kept its records and filed its Federal income tax returns on the cash basis of accounting.

22. At the time it acquired the net assets of the Wendell National Bank, the plaintiff allocated \$10,843.55, of the purchase price of the assets to accrued interest on notes receivable. In a subsequent revenue agents' examination of the Idaho First National

Bank, the amount of accrued interest on notes receivable was corrected to \$13,191.19. When this accrued interest was collected by the plaintiff subsequent to its purchase of the assets of the Wendell National Bank it reported it as income for tax purposes but offset the collections against the allocated cost of the accrued interest on notes receivable, so that all of the amount collected was recovery of cost and not subject to income tax.

23. The individual stockholders of the Wendell National Bank who sold their stock to plaintiff for \$418.50 per share paid a capital gains tax on the excess of the selling price over the cost or other basis of their stock. A copy of the Federal tax return of Austin and Eda Schouweiler, principal stockholders, is attached hereto as Exhibit E, to this stipulation.

24. That the Commissioner of Internal Revenue rejected the claim for refund on the 5th day of July, 1956. Copy of said rejection notice is attached as Exhibit F, to this stipulation.

/s/ MYRON E. ANDERSON,
Attorney for Plaintiff.

/s/ BEN PETERSON,
Attorney for the Defendant.

[Endorsed]: Filed August 14, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case coming on to be heard on completely stipulated facts, and the Court having considered the stipulation of facts, the exhibits thereto and the briefs of both parties filed herein, and having heretofore, on October 4, 1957, entered its Memorandum of Decision in favor of the defendant, and the Court being otherwise fully advised in the premises, does hereby make and enter its findings of fact and conclusions of law.

Findings of Fact

1. During all times mentioned herein plaintiff was a duly authorized and existing corporation, under and by virtue of the National Bank Act, with its principal place of business in the City of Boise, Idaho. Plaintiff is a resident of the above-entitled judicial district.

2. Prior to the 10th day of May, 1952, the Wendell National Bank, a corporation, was a duly authorized and existing corporation, under and by virtue of the National Bank Act, with its principal place of business at Wendell, Idaho, within the above-entitled judicial district.

3. On the 10th day of May, 1952, plaintiff purchased the entire capital stock of the Wendell National Bank, Wendell, Idaho, for the sole purpose of acquiring the assets of said bank.

4. On the 10th day of May, 1952, immediately after the purchase of the Wendell National Bank stock by plaintiff, a special meeting of the stockholders of said Wendell National Bank was held, and by resolution, duly and regularly passed by a vote of one hundred per cent of the total capital stock of said corporation, the Wendell National Bank was voluntarily dissolved and E. R. Jones, Vice-President of plaintiff corporation, was appointed liquidating agent, for the purpose of winding up the affairs of said corporation.

5. On May 10, 1952, all assets and liabilities of the Wendell National Bank, both real and personal, were delivered to plaintiff.

6. On May 10, 1952, the Wendell National Bank was fully liquidated for all intents and purposes.

7. Said Wendell National Bank was in the general banking business and prior to its ceasing business and liquidating consistently reported its income on the "cash basis" method of accounting.

8. On June 20, 1952, a corporation income tax return was filed for the Wendell National Bank, for the period from January 1, 1952, through May 10, 1952, by plaintiff. In that return the plaintiff included as taxable income accrued interest on notes receivable in the amount of \$10,843.55. Plaintiff paid \$5,577.61 on June 25, 1952, and on July 7, 1952, the plaintiff paid \$242.51 to the defendant in satisfaction of the tax liability shown to be due on that return.

9. The accrued interest on notes receivable was calculated at the time of liquidation of the Wendell National Bank in order to determine the value of the assets for liquidation purposes by computing the interest earned but not then payable, on each note from the date of the instrument to the date of the liquidation. The amount of the accrued interest was placed in pencil notation on each note. The interest was then totaled by means of an adding machine tape, the total being \$13,191.19. Expenses attributable to this accrued interest on notes receivable had been deducted for income tax purposes when paid by the Wendell National Bank prior to its liquidation. Unpaid accrued expenses of the Wendell National Bank had not been deducted for income tax purposes at the date of liquidation.

10. Subsequently on or about November 18, 1954, the Commissioner of Internal Revenue through his delegate examined the final corporation income tax return of the Wendell National Bank for the period from January 1, 1952, to May 10, 1952. The revenue agent's report dated November 18, 1954, eliminated the accrued interest from income giving the following reason: "The Wendell National Bank has always kept records and filed returns on the cash basis. Just prior to the distribution of the assets of the Wendell National Bank to the Idaho First National Bank on May 10, 1952, accrued interest was set up in Wendell record and return by means of a debit to the assets receivable and credit to taxable income. Although the interest had accrued it was not pay-

able. The accrued interest does not represent taxable income to the Wendell National Bank on cash basis of computing income and is therefore eliminated.”

11. The Internal Revenue Service determined that the elimination from income of accrued interest on notes receivable in the amount of \$10,843.55 resulted in an overassessment in the amount of \$3,253.07, which was scheduled for refund on February 17, 1955. The refund of that amount plus interest was received by the plaintiff on or about March 15, 1955.

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Cumulative Bulletin 1953-2, 10. He further stated that "The substance of the above ruling and the cited cases is that where the taxpayer liquidating corporation has performed substantially all the services necessary to establish its right to the income, the Commissioner is within his rights under Section 41 to change the method of determining income to include such items, Section 22 (a) (20) relating to the gross income of corporations in liquidation notwithstanding. In view of the foregoing, it is held that interest accrued at May 10, 1952, in the amount of \$10,843.55, is taxable to the liquidating corporation, the Wendell National Bank, and adjustment is made accordingly."

Plaintiff did not accept the findings of the Commissioner and on December 12, 1955, filed a protest.

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15. On April 6, 1956, the Commissioner of Internal Revenue issued a deficiency notice to the plaintiff stating that the deficiency of \$3,957.36, plus interest as provided by law constituted its liability as a transferee of the assets of the Wendell National Bank, and would be assessed unless the plain-

tiff filed a petition in the Tax Court of the United States, within ninety days, seeking a redetermination of the deficiency.

16. Plaintiff in exercising its right to choose the forum elected to pay the tax and seek relief in the United States District Court.

17. On May 29, 1956, plaintiff paid the transferee assessment of \$3,957.36, plus interest of \$896.22 or a total of \$4,853.58.

18. The plaintiff in paying the transferee assessment has the right to contest the tax issue of the transferor and is liable as transferee for any additional tax owed by the transferor.

19. On May 29, 1956, the plaintiff as transferee, filed a claim for refund of \$3,957.36, or any other amount legally refundable by law, plus interest provided by law.

20. The Wendell National Bank has always kept its records and filed its federal income tax returns on the cash basis of accounting.

21. At the time it acquired the net assets of the Wendell National Bank, the plaintiff allocated \$10,-843.55 of the purchase price of the assets to accrued interest on notes receivable. In a subsequent revenue agent's examination of the Idaho First National Bank, the amount of accrued interest on notes receivable was corrected to \$13,191.19. When this accrued interest was collected by the plaintiff subsequent to its purchase of the assets of the Wendell

National Bank it reported it as income for tax purposes but offset the collections against the allocated cost of the accrued interest on notes receivable, so that all of the amount collected was recovery of cost and not subject to income tax.

22. The individual stockholders of the Wendell National Bank who sold their stock to plaintiff for \$418.50 per share paid a capital gains tax on the excess of the selling price over the cost or other basis of their stock.

23. The Commissioner of Internal Revenue rejected the claim for refund on the 5th day of July, 1956.

Conclusions of Law

1. The court has jurisdiction over this case by virtue of 28 U.S.C. Section 1346 (a) (1).

2. The position taken by the defendant in this case is warranted by statute and has ample support in the decisions.

3. Accordingly the interest accrued on notes receivable in the taxable period ending with the liquidation of the Wendell National Bank are taxable as income to it in that year, notwithstanding the fact that it reported its income for tax purposes on the cash receipts and disbursements basis.

4. Judgment will be entered in favor of the defendant, dismissing the plaintiff's complaint, with costs to be paid by the plaintiff.

Dated this 2nd day of December, 1957.

/s/ WILLIAM HEALY,
Acting United States District
Judge.

[Endorsed]: Filed December 2, 1957.

In the United States District Court for the
District of Idaho, Southern Division

Civil Action No. 3269

THE IDAHO FIRST NATIONAL BANK,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

The above-entitled cause having been submitted on an agreed statement of facts and stipulation, and the court having fully considered the pleadings, the agreed statement of facts and stipulation, and the briefs of the parties on file herein, and being fully advised and after deliberating in the premises, and having filed herein its findings of fact and conclusions of law and having heretofore denied plaintiff's motion for amendment of said findings of fact and conclusions of law, and having directed

that judgment be entered in accordance with the findings of fact and conclusions of law and having heretofore denied plaintiff's motion for amendment of said findings of fact and conclusions of law, and having directed that judgment be entered in accordance with the findings of fact and conclusions of law heretofore entered, now, therefore, by reason of the law and the findings aforesaid, it is hereby

Ordered, Adjudged, and Decreed that defendant, United States of America, do have and is awarded judgment against the plaintiff, the Idaho First National Bank, and that said defendant do have and recover of and from said plaintiff its costs in this action.

Dated this 24th day of January, 1958.

/s/ WILLIAM HEALY,
Acting District Judge.

[Endorsed]: Filed January 27, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that The Idaho First National Bank, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth

Circuit from the final judgment dated January 24, 1958, entered in this action on January 27, 1958.

/s/ MYRON E. ANDERSON,

ANDERSON, KAUFMAN
AND ANDERSON,

By /s/ EUGENE H. ANDERSON,
Attorneys for Plaintiff.

[Endorsed]: Filed March 19, 1958.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Idaho—ss.

I, Ed. M. Bryan, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing papers are that portion of the original files designated by the parties and as are necessary to the appeal under Rule 75(RCP):

1. Complaint.
2. Answer.
3. Stipulation of Fact with Exhibits A, B, C, D, E and F attached.
4. Minutes of the Court of August 14, 1957.
5. Memorandum of Decision dated October 4, 1957.
6. Findings of Fact and Conclusions of Law.
7. Judgment.

8. Notice of appeal.
9. Statement of points.
10. Designation of appellant of contents of record on appeal.
11. Designation of appellee of additional portions of record on appeal.
12. Copy of docket entries.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court, this 21st day of April, 1958.

[Seal]

ED. M. BRYAN,
Clerk;

By /s/ LONA MANSER,
Deputy.

[Endorsed]: No. 16004. United States Court of Appeals for the Ninth Circuit. The Idaho First National Bank, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Idaho, Southern Division.

Filed: April 24, 1958.

Docketed: May 5, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 16004

THE IDAHO FIRST NATIONAL BANK,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

STATEMENT OF POINTS RELIED UPON

Pursuant to Rule 17, subsection 6, of the above-entitled Court, appellant makes Statement of Points as follows:

I.

Interest neither due nor payable, on notes and obligations to a banking corporation reporting its income for tax purposes on a cash basis, is not taxable income to the banking corporation upon its liquidation and the transfer of its assets to its shareholder.

Dated May 2nd, 1958.

/s/ MYRON E. ANDERSON,
ANDERSON, KAUFMAN
AND ANDERSON,

By /s/ EUGENE H. ANDERSON,
Attorneys for Appellant.

[Endorsed]: Filed May 5, 1958.

